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8 UNITED STATES DISTRICT COURT  
9 FOR THE NORTHERN DISTRICT OF CALIFORNIA  
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11 FREDERICK GATLIN,  
12 Petitioner,

13 v.  
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15 JAMES TILTON, SECRETARY OF THE  
16 CALIFORNIA DEPARTMENT OF  
CORRECTIONS AND REHABILITATION,  
Respondent.

Case No. 07cv3696-CW

ORDER DENYING PETITION FOR  
A WRIT OF HABEAS CORPUS

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18  
19 Petitioner was convicted of vehicle theft and, based upon  
20 two prior robbery convictions, sentenced to twenty-five years to  
21 life pursuant to California's Three Strikes Law. (Doc. No. 11 at  
22 1.) The merits of his federal habeas petition, (Doc. No. 1), are  
23 presently before the Court.

24 Petitioner's first argument is that the evidence of  
25 Petitioner's prior robbery convictions was insufficient to  
26 support a sentence pursuant to the Three Strikes Law. (Id. at  
27 10-11.) However, as Petitioner acknowledges, the trial court had  
28 before it the abstract of judgment of Petitioner's prior robbery  
convictions, (Resp't's Ex. A at Augmentation 46-48), which

1 established the convictions. (Doc. No. 1 at 11.) Robbery  
2 convictions always constitute strikes pursuant to the Three  
3 Strikes Law, regardless of the facts underlying the convictions.  
4 See Cal. Penal Code §§ 667; 1192.7(c)(19). Accordingly, the  
5 evidence of Petitioner's two prior robbery convictions  
6 conclusively demonstrated that Petitioner was subject to  
7 sentencing pursuant to the Three Strikes Law.

8 Next, Petitioner challenges the constitutionality of the  
9 Three Strikes Law. (Doc. No. 1 at 12-24.) Petitioner's claims  
10 lack merit. Recidivist statutes such as the Three Strikes Law  
11 comport with the constitutional guarantee of equal protection of  
12 the laws. See Oyler v. Boles, 368 U.S. 448 (1962); Jackson v.  
13 Nelson, 435 F.2d 553 (9th Cir. 1971). The Three Strikes Law was  
14 properly enacted as urgency legislation under the California  
15 Constitution and therefore accords with due process. People v.  
16 Green, 58 Cal. App. 4th 1076, 1088-89 (1996). The Three Strikes  
17 Law does not violate the Double Jeopardy Clause. Monge v.  
18 California, 524 U.S. 721 (1998). The application of the Three  
19 Strikes Law to Petitioner, in light of his conviction for vehicle  
20 theft and prior convictions for robbery, does not constitute  
21 cruel and unusual punishment. See Lockyer v. Andrade, 538 U.S.  
22 63 (2003); Ewing v. California, 538 U.S. 11 (2003). Accordingly,  
23 California's Three Strikes Law, both on its face and as applied  
24 to Petitioner, is constitutional.

25 Petitioner's next argument is that the use of his prior  
26 robbery convictions to enhance his current sentence constituted a  
27 breach of the plea agreement that had resulted in the prior  
28 convictions because he was told at the time that the two

1 convictions would be counted as one strike, not two. (Doc. No. 1  
2 at 25-27.) The Court has carefully reviewed the record and finds  
3 that there is no evidence of an agreement that Petitioner's  
4 robbery convictions would be counted as one strike. Accordingly,  
5 the use of the prior convictions as two strikes did not violate  
6 Petitioner's plea agreement.

7 Finally, Petitioner asserts that his sentence is invalid  
8 because a judge rather than a jury found that he had suffered  
9 prior convictions. (Id. at 28.) However, Petitioner waived his  
10 right to a jury trial as to whether he had prior convictions.  
11 (Resp't's Ex. A at 183.) Petitioner's sentence is valid.

12 Accordingly, and good cause appearing therefor, the Court  
13 denies Petitioner's Petition for a Writ of Habeas Corpus and  
14 declines to issue a certificate of appealability. The Clerk of  
15 the Court shall enter judgment in favor of Respondent and shall  
16 close the file.

17 IT IS SO ORDERED.

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19 DATED: 2/2/12

  
CLAUDIA WILKEN  
United States District Judge